



POLICE DEPARTMENT

March 12, 2018

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In the Matter of Charges and Specifications	:	Case No.
- against -	:	2016-16523
Police Officer Kathleen Ryan	:	
Tax Registry No. 934789	:	
10 <sup>th</sup> Precinct	:	

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At: Police Headquarters  
One Police Plaza  
New York, New York 10038

Before: Honorable Nancy R. Ryan  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Rachel Grinspan, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, NY 10038

For the Respondent: Craig R. Hayes, Esq.  
Worth, Longworth & London  
111 John Street – Suite 640  
New York, NY 10038

To:

HONORABLE JAMES P. O'NEILL  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NEW YORK 10038

### **CHARGES AND SPECIFICATIONS**

1. Said Police Officer Kathleen Ryan, on or about March 21, 2016, while on-duty and assigned to the 10th Precinct, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: Said Police Officer failed to follow proper complaint report procedures resulting in a misclassification of a crime. (*As amended at trial*).

P.G. 203-10, Page 1, Para. 5 –

PUBLIC CONTACT –  
PROHIBITED CONDUCT

P.G. 207-07 –

PRELIMINARY INVESTIGATION OF  
COMPLAINTS

2. Said Police Officer Kathleen Ryan, on or about March 21, 2016, while on-duty and assigned to the 10th Precinct, wrongfully caused false entries to be made in Departmental records, to wit: Said Police Officer indicated that property had been lost when the complainant had indicated contrary information about a missing wallet.

P.G. 203-05, Page 1, Para. 4 –

PERFORMANCE ON DUTY

### **SUMMARY OF FINDINGS AND RECOMMENDED PENALTY**

The above-named member of the Department appeared before me on February 8, 2018.

Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. The Department called Lieutenant Michael Brill as a witness. Respondent testified on her own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. After reviewing the evidence presented at the hearing and assessing the credibility of the witnesses, I find Respondent Guilty of Specifications 1 and 2 for failure to follow proper complaint report procedures and for causing false entries in Departmental records. I recommend a penalty of a Reprimand.

### **ANALYSIS**

It is undisputed that on March 21, 2016, Internal Affairs conducted a random integrity test. Respondent and her partner were on duty, in uniform, and were on routine patrol in a marked police car within the 10th Precinct. Respondent was the recorder and was seated in the

passenger seat of the RMP when she and her partner responded to a radio run of a past larceny. The IAB undercover approaches Respondent's RMP as it comes to the curb. There are two video clips with audio that record the interactions between Respondent and the undercover. (Dep't. Ex. 1)

On Exhibit 1, the undercover can be heard telling Respondent that she had been shopping and when she went to get on a bus, someone told her that her bag was open. She looked inside and her wallet was gone. Respondent asks the undercover if she had any credit cards and the undercover tells Respondent she had no credit cards, but had about \$150, a calling card and a Metrocard. The Respondent asks the undercover if anyone bumped into her and the undercover answers, "Yeah. I'm in the city so I didn't pay it any mind." Respondent gave the undercover a form to fill out itemizing the property that was missing.

Respondent asks the undercover where she was when she was bumped and the undercover replies that she was on 7<sup>th</sup> Avenue and states that it was kind of crowded. She says she was walking, it was just a bump, and again says she didn't pay it much mind. Respondent asks the undercover if she thought she was pickpocketed. The undercover replies that there was a point where it was a little crowded and the person could have bumped her to do that but that she doesn't know. The undercover takes the form and a pen she gets from the officers, and goes into a store to fill it out.

The undercover returns to the RMP and gives Respondent the form. Respondent then asks her where she was taking the bus and what time she last remembers seeing her wallet. The undercover replies that she last saw it around 3 pm and realized she didn't have it at around 4 pm. Respondent tells the undercover she checked with the Detective Squad and they said it

would be considered lost property because if somebody just bumps you while you are walking in the city with a backpack on, they were not going to be quick enough to unzip the bag and take the wallet. She adds that it was probably just regular city walking with people bumping into you. Respondent explained that the lost property report will be taken and that the undercover can call the next day to get a complaint report number. Respondent advises the undercover that she can take the loss on her taxes next year. Respondent also checks whether the undercover needs money to get home.

Respondent prepared and signed a complaint report concerning the incident. (Dep't. Ex. 2) In the narrative section she wrote, "At T/P/O C/V states unk person told her that her bag was open and C/V noticed her wallet was missing. C/V was not bumped or jostled."

The Department called one witness at trial, Lieutenant Michael Brill, a team leader of the confidential investigation team within the Quality Assurance Division. (Tr. 11) Lieutenant Brill received a referral of a random integrity test investigation from IAB regarding Respondent in March, 2016. (Tr. 11-13) He testified that the test was designed to have an officer generate a report classified as grand larceny, but the report generated by Respondent was for lost property. (Tr. 14) Lieutenant Brill reviewed the videos taken of the test as well as the complaint report generated by Respondent. (Tr. 19, Dep't Ex. 2) He also interviewed Respondent on June 20, 2016. (Tr. 14) During this interview, Respondent told Lieutenant Brill that the reason she classified the property as lost was that she had consulted with a member of the 10<sup>th</sup> precinct Detective Squad and based on her summary of the facts, the detective recommended that the incident be classified as lost property. (Tr. 20-21) Lieutenant Brill testified that according to the patrol guide, a patrol officer is supposed to call either the patrol supervisor or the desk officer if

they have any question about how to classify a crime and that Respondent had not done that. (Tr. 21)

On cross-examination, Lieutenant Brill conceded that an integrity test should not be ambiguous and that in situations such as this case, the undercover should clearly explain the elements of a grand larceny. (Tr. 25) He also agreed that if someone who has been bumped into finds that they are missing property, those facts do not automatically result in a conclusion that a grand larceny has been committed. (Tr. 35) He added that in this case, there also was the element of an unzipped backpack and that raised the situation to the possibility of a grand larceny having been committed. It then became incumbent on the Respondent to ask further questions. Lieutenant Brill acknowledged, though, that Respondent was not charged with conducting an improper investigation. (Tr. 36-37)

Respondent testified that, as evidenced on the video, the undercover in her initial statement to Respondent did not indicate she had been bumped or jostled. Respondent went through her checklist of questions and asked the undercover if she had been bumped. While the undercover did say she was bumped, she gave no further details of the bump. (Tr. 43-44) Respondent testified that she tried to get details by asking the undercover if she was bumped like being pickpocketed or just "regular city walking" bumped and the answer from the undercover was just, "Eh, could have." Respondent testified that she called the Detective Squad and relayed the facts she had gathered to double check what she was thinking because the Detective Squad is the group that ultimately conducts investigations. The person she spoke to, whose name she does not remember, told her it sounded like a lost property situation. She didn't call her sergeant since it wasn't being classified as a crime. (Tr. 45-46, 49, 53) Respondent testified that she

decided to classify the incident as lost property since the undercover was "too vague with everything," and wouldn't give her any specific details about what happened. Respondent did not think the information she had was sufficient to make out the crime of grand larceny. (Tr. 46-47) Respondent further testified that the reason she wrote on her paperwork that the undercover wasn't jostled or bumped was that it is "police lingo" to write that the person wasn't jostled or bumped to indicate they were not the victim of a crime. Respondent did not believe that the undercover ever described a bump that was the type that happens in a pickpocket or a theft scenario. (Tr. 47-48) Respondent ultimately did not believe that the undercover was bumped, but rather that the undercover was unsure of what happened. (Tr. 58)

Respondent is charged with two specifications of misconduct. Specification 1 charges that she failed to follow proper complaint report procedures resulting in a misclassification of a crime. The Department has argued that the specific procedures Respondent failed to follow are set out in Patrol Guide (PG) 207-07 (6) (b), which states that the officer is to consult with the patrol supervisor or desk officer, if doubt exists as to whether a complaint should be closed or referred for investigation; and PG 207-07 (5) (c), which states that the officer is to record on the complaint report worksheet sufficient facts that caused determination of preliminary classification of crime.

With regard to PG 207-07 (6) (b), Respondent testified credibly that she did not believe the undercover made out the elements of a grand larceny and she called the Detective Squad in essence to confirm what she was thinking. By seeking a second opinion, Respondent has admitted to some degree of doubt about her thoughts on the classification of the incident and technically should have consulted with the patrol supervisor or desk sergeant, instead of the

Detective Squad. The court, while finding that Respondent violated PG 207-07 (6) (b), notes for purposes of penalty considerations that Respondent did make an effort to consult on the situation with detectives she thought would be familiar with similar scenarios. She did not just dismiss the facts without giving them consideration and seeking further opinions.

With regard to PG 207-07 (5) (c), this section requires an officer to record sufficient facts on the complaint report to indicate what caused the determination of the classification that was made. Here, Respondent recorded information that contradicted the statements the undercover made to her. According to her testimony, Respondent made the determination that the incident only amounted to lost property because she did not believe the vague bump mentioned by the undercover amounted to the type of bump that would have occurred if a grand larceny had taken place. Respondent should have made that clear in the report rather than incorrectly stating there was no bump or jostling. While Respondent testified that she was just using police lingo to fill out this section, the language she chose to use did not accurately reflect either the information she received from the undercover nor Respondent's own conclusions about that information, and as such, violated PG 207-07 (5) (c). I find Respondent Guilty of Specification 1.

With regard to Specification 2, Respondent is charged with wrongfully causing false entries to be made in Department records in that she indicated property had been lost when the complainant indicated contrary information about a missing wallet. As analyzed above, with regard to the information recorded on the complaint report, Respondent did not accurately record the information she received from the undercover. The undercover indicated she was bumped. If Respondent determined that the bump was not of the type associated with a pick pocketing event that could have resulted in a wallet being extracted from a backpack, she could have made

that clear instead of simply stating on the official report that there was no bump. Respondent is Guilty of Specification 2.

### **PENALTY**

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 1, 2004. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

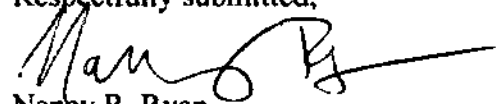
The Department has asked that a penalty of the loss of ten vacation days be imposed. I find that this is excessive in light of all the facts in this case and instead recommend that Respondent receive a reprimand.

First of all, as indicated in the testimony of Lieutenant Brill, an integrity test should present a set of unambiguous facts to the subject. That clearly was not done in this case. The undercover made vague responses about the nature of the bump in a manner that made it quite possible to conclude that she had merely experienced normal city walking bumps. Also, significantly, it is clear to the court that Respondent was not shirking her duty in this case. She did not just tell the undercover to forget about the situation. Instead, Respondent gave the undercover the necessary paperwork to fill out, waited for her to fill it out, explained to her how she could get the report number the next day, and even went beyond what was called for by making sure the undercover had money to get home. Also, as previously mentioned, the Respondent did not just immediately conclude that the scenario amounted to a lost property situation. She did ask the undercover questions to try to get additional information about what happened and did make the effort to call the Detective Squad to get their input on the situation. I



do not find that Respondent intentionally tried to falsify an official report with the language she used on the complaint report but rather, albeit incorrectly, chose to use language that reflected her conclusion that the incident was a lost property incident. While the Respondent is technically Guilty of the charges, I find that her lapses in following the exact procedures set out in the Patrol Guide can best be remedied with a reprimand.

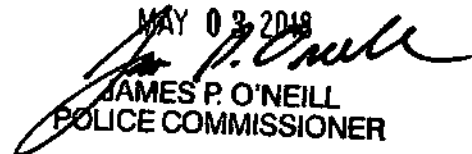
Respectfully submitted,



Nancy R. Ryan  
Assistant Deputy Commissioner Trials

**APPROVED**

MAY 03 2018



JAMES P. O'NEILL  
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER KATHLEEN RYAN  
TAX REGISTRY NO. 934789  
DISCIPLINARY CASE NO. 2016-16523

Respondent was appointed to the Department on July 1, 2004. On her last three annual performance evaluations, she received overall ratings of 3.5 "Highly Competent/ Competent" in 2014, 2015 and 2016. She has been awarded one medal for Excellent Police Duty and one medal for Meritorious Police Duty. [REDACTED]

In 2010, Respondent negotiated a penalty of 30 suspension days without pay, 15 vacation days, and was placed on one-year dismissal probation for misconduct that was the subject of two separate disciplinary cases. In the first matter, Respondent pled guilty to wrongfully utilizing a Department computer system to make an unauthorized background check unrelated to Department business. In the second case, Respondent pled guilty to knowingly associating with an individual who had, or was reasonably believed to have, engaged in criminal activities and failing to safeguard her Department parking plaque.

In connection with the instant charges and specifications, Respondent was placed on Level 1 Discipline Monitoring on April 6, 2017. She was previously on Level 2 Discipline Monitoring from September 18, 2008 to May 18, 2010.

For your consideration.

Nancy R. Ryan  
Assistant Deputy Commissioner Trials